

subclass 490, and

Group II (claims 12-15) drawn to methods for preparing one-part liquid color developer replenisher compositions, classified in class 430/subclass 450.

Applicant provisionally elects the invention of Group I (claims 1-11) with traverse for examination on the merits. In addition to claims 1-11, newly added claims 16-19 should also be grouped with Group I (claims 1-11) for examination purposes, and examined with the elected claims.

An election of species with respect to claims 1-11 was also made pursuant to the Official Action of January 3, 2003.

The election of species requirement is improper and not in compliance with 37 CFR 1.146, and is courteously traversed.

In making the requirement, the Examiner assembles a list of virtually every element appearing in the disclosure consisting of some twenty two (22) allegedly distinct categories of ingredients, not merely developer, stabilizer, buffering agents and solvents, but also solution properties, such as pH, number of phases, etc., etc.

The fact the Examiner has found virtually every disclosed element of the invention, including solution properties, as grounds for a 22 way election of species requirement only magnifies the extreme nature of the requirement, and apparent abuse of discretionary authority exercised in its imposition. For example, applicant has identified a specific developer known in the art as CD-4, 4(N-ethyl-N-2-hydroxyethyl)-2-methylphenylenediamine, which has rather unique stability problems when in solution which Applicant discovered can only be remedied by a specific hydroxylamine derivative, namely SEHA. Applicant's specification discloses CD-4 developer is useful as a free-base and salt, specifically the sulfate salt. Notwithstanding this disclosure, paragraph B.1. on page 2 of the Official Action alleges there are

"many possible 4(N-ethyl-N-2-hydroxyethyl)-2-methyl-phenylene-diamine-containing developers." This conclusion was reached by the Examiner without showing any factual knowledge of species other than those disclosed by Applicant, or that the species disclosed by Applicant are, in fact, patentably distinct from one another (required under Rule 146). In arriving at such a conclusion, the Examiner must consider Applicant's disclosed species. It is apparent, this has not been done.

Like the other elements of the invention, the Examiner fails to provide appropriate rationale for requiring a 22 way election of species requirement. The Office Action alleges virtually every element of the invention, such as the buffering system reads on many possible buffering agents, which are all allegedly patentably distinct. Here again, the Examiner falls far short of establishing a fair basis for the allegedly many patentably distinct species of buffering agents from those species disclosed in the text of the application, as required by Rule 146.

In summation, Applicant maintains the election of species requirement as set-forth in the Office Action is not in compliance with the requirements of 37 CFR §1.146. The imposition of such an all inclusive sweeping 22 way requirement encompassing virtually every element of the invention, including properties of the concentrates, and methods of making, all clearly point to the exercise of discretionary authority by the Examiner that is clearly excessive. Finally, the excessive nature of the election requirement, non-compliance with Office guidelines and the Rules of Practice, collectively demonstrates abuse of the Examiner's discretionary authority in such matters.

Notwithstanding, Applicant provisionally elects for examination purposes with traverse the sulfate salt as the ultimate specie of "4(N-ethyl-N-2-hydroxyethyl)-2-methylphenylenediamine-containing developer."

Claims 1 and 5 of the elected Group I are generic claims.

Sub-claims 2-4, and newly presented claim 16 are all readable on the ultimate elected developer specie and are dependent from generic claim 1. Therefore, if generic claim 1 and dependent claims 2-4 and 16 are found to be allowable then **all the remaining dependent claims of this group, including claims 17 and 18 must also be allowed.**

Dependent claims 6-11 and newly presented claim 19 are all readable on the ultimate elected developer specie and are dependent from generic claim 5. Therefore, if generic claim 5 and claims 6-11 are found to be allowable then **the remaining subclaims dependent from allowable generic claim 5 of this group, namely claim 19 must also be allowed.**

Applicant also provisionally elects with traverse the disodium salt of N,N-bis(2-sulfoethyl)hydroxylamine for examination on the merits. The rationale for the traversal is for the same reasons outlined above in connection the CD-4 developer.

As stated above, Claims 1 and 5 are generic claims and the disodium salt of N,N-bis(2-sulfoethyl)hydroxylamine is specifically readable on dependent claim 2. Therefore, the allowance of the elected claim 2 and generic claims 1 and 5, then the remaining dependent claims (claims 3-4, 6-11 and 16-19) must also be found allowable.

Supplemental Information Disclosure Statement

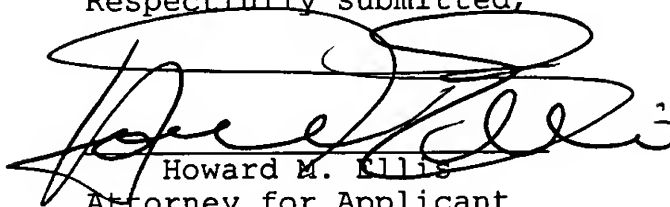
It appears this application has not been examined on the merits to date, but examined only to the extent needed to make an election requirement. The above conclusion is supported by 37 CFR §1.142 which provides that a restriction requirement is normally made before any action on the merits.

In view of the above status of the application, Applicant is submitting herewith copies of three (3) additional US patent documents for consideration by the Examiner during examination of

this application on the merits. Copies of the attached patent publications have been recorded on the accompanying PTO form 892.

Respectfully submitted,

January 29, 2003

A large, stylized handwritten signature in black ink, appearing to read "Howard M. Ellis", is written over the typed name.

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